

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

DATTCO, INC.  Employer  and  TEAMSTERS LOCAL 559  Petitioner	Case No. 34-RC-1955
DATTCO, INC.  Employer  and  LOCAL 371, UNITED FOOD AND COMMERCIAL WORKERS UNION, AFL-CIO, CLC  Petitioner	Case No. 34-RC-1956

**SUPPLEMENTAL DECISION ON REMAND**

On May 22, 2002, the undersigned issued a Decision and Direction of Election in the above-entitled matter finding, *inter alia*, that the Employer had failed to rebut the presumption that a single facility unit limited to the drivers at its Middletown facility is an appropriate unit for the purposes of collective bargaining. In reaching this conclusion, I noted that the Board had previously held that the Employer had failed to rebut the presumption favoring a single facility unit at another Connecticut location, and that the only new evidence proffered by the Employer in this case regarding its overall operations and the Middletown facility was insufficient to rebut the single facility presumption.

On June 12, 2002, the Board granted the Employer's Request for Review of the Decision and Direction of Election because it raised substantial issues

warranting review. The election was conducted on June 14, 2002, and all ballots were impounded. On October 9, 2002, the Board remanded the case to the undersigned for a supplemental decision, including reopening the record, if necessary, in light of its Decision and Order in *Dattco, Inc.*, 338 NLRB No. 7 (September 27, 2002), herein called *Dattco-Hartford*, in which the Board found that a unit of drivers and monitors at the Employer's Hartford, Connecticut facility did not constitute an appropriate unit.

Although afforded the opportunity to do so following the remand, neither the Employer nor the Petitioners offered to submit any additional evidence. Accordingly, the record was not re-opened. The parties were also offered the opportunity to submit briefs, which were subsequently submitted by the Employer and Teamsters Local 559.

Upon further consideration of the factual record in this case, in conjunction with the Board's Decision in *Dattco-Hartford*, I find that the Employer has failed to present sufficient evidence to rebut the presumption that a single facility unit limited to the drivers at the Middletown facility is an appropriate unit for the purposes of collective bargaining. To the contrary, I find that a unit of drivers limited to the Middletown facility is an appropriate unit.

1. The Board's Decision in *Dattco-Hartford*

In *Dattco-Hartford*, the Board considered the appropriateness of a unit of drivers and monitors at the Employer's Hartford, Connecticut facility. That facility was first established by the Employer in January 1998. Four months later the Employer bid on and was awarded a contract to provide school bus transportation for the 1998-1999 school year for Project Choice, a statewide school balancing program involving Hartford and suburban Hartford school children. Project Choice (operating under the name Project Concern) was previously serviced by Laidlaw, Inc., which retained the general school bus transportation contract for Hartford. The Employer subsequently hired many of Laidlaw's drivers and monitors who had previously worked under the Project Choice contract. As a result, Civil Service Employees Affiliates Local 760M, SEIU, AFL-CIO, which previously represented those employees at Laidlaw,

requested recognition from the Employer.<sup>1</sup> The union's request was rejected by the Employer on the basis, inter alia, that the Hartford facility was a functionally integrated part of its statewide operations and was not an appropriate unit for bargaining. The judge rejected that contention, relying exclusively on the Board's decisions in *Dattco, Inc.*, 324 NLRB 323 (1997), herein called *Dattco-Clinton*, and *Dattco, Inc.*, 325 NLRB No. 138 (1998), herein called *Dattco-North Branford*. The Board in those two cases had found that single facility units were appropriate at the Employer's Clinton and North Branford facilities.

In reviewing the judge's decision in *Dattco-Hartford*, the Board, citing *New Britain Transportation Co.*, 330 NLRB 397 (1999) and *J & L Plate*, 310 NLRB 429 (1993), reaffirmed the well-established principle that a single facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity. Citing *J & L Plate*, supra, and *D & L Transportation, Inc.*, 324 NLRB 160 (1997), the Board also reaffirmed that it considers the following factors in determining whether the single facility presumption has been rebutted: central control over daily operations and labor relations, including the extent of local autonomy; degree of employee interchange; similarity of skills, functions, and working conditions; and bargaining history. Finally, citing *Dunbar Armored Inc. v. NLRB*, 186 F.3d 844 (7<sup>th</sup> Cir. 1999), the Board emphasized that "[e]ach case must be assessed on its own facts, even where, as here, the Board has made previous determinations about other facilities of the same employer."

Applying these principles to the facts before it, the Board in *Dattco-Hartford* noted the Employer's highly centralized operations and labor relations and the uniformity of skills and terms and conditions of employment that similarly existed in *Dattco-North Branford* and *Dattco-Clinton*. Notwithstanding those factors, single facility units were found appropriate in those cases, according to the Board in *Dattco-Hartford*, because the terminal managers and dispatchers at those terminals exercised a high degree of autonomy over day-to-day operations,

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<sup>1</sup> There appears to be no direct relationship between that union and either Petitioner in the instant matter.

including assignment, dispatch, and minor discipline, and there was only minimal interchange of drivers between the terminals in issue and the Employer's other terminals. In contrast, the Board in *Dattco-Hartford* noted that at the Hartford terminal, employee interchange is substantial and, because of that substantial interchange, the terminal manager exercises much less authority over drivers based at that terminal. More specifically, the Board noted that 24 Hartford-based drivers are shuttled to other terminals each day to service routes at those terminals, during which time they are supervised by the managers at the receiving terminal and not by the Hartford terminal manager. Thus, the Board concluded that:

unlike the Clinton and North Branford terminals in previous litigation, the Hartford terminal is a labor pool that regularly supplies a significant amount of manpower to other terminals. We cannot find that the drivers and monitors at the Hartford terminal constitute a viable unit when fully one-third of the employees there do not actually work in the unit on a regular basis and are separately supervised by terminal managers elsewhere. This level of interdependence and interchange is significant and, with the centralization of operations and uniformity of skills, functions, and working conditions, is sufficient to rebut the presumptive appropriateness of the single facility unit.

*Dattco-Hartford*, 338 NLRB No. 7, slip op. at 3.

2. The Decision and Direction of Election

As noted in the undersigned's Decision and Direction of Election in the instant matter, the facts regarding the operation of the Middletown facility are virtually identical to those described by the Board in *Dattco-Clinton*, and the additional evidence initially proffered by the Employer was insufficient to alter that decision. More specifically, I noted that the Middletown facility had been significantly understaffed since the beginning of the 2001-2002 school year. In this regard, the school bus contracts covered by the Middletown facility required approximately 110 drivers, but only about 70 drivers were permanently assigned to work there. As a result, there was no evidence of any permanent transfers of drivers from the Middletown facility to other facilities, and only two drivers were

permanently transferred from other facilities to the Middletown facility since January 1, 2001. Temporary transfers of drivers from the Middletown facility to other facilities was similarly restricted, with only about 100 hours of school bus driving performed by Middletown drivers at other facilities from January 1 to May 4, 2002.

However, as I also noted, the shortage of drivers permanently assigned to the Middletown facility required the Employer to fill that shortage on a daily basis with other non-driving employees at the Middletown facility, along with drivers, managers, supervisors, and other employees from other facilities. Although such daily temporary transfers resulted in a significant number of employees from other facilities being regularly assigned to drive buses out of the Middletown facility, I noted that such evidence lacked any context and was of little evidentiary value because there was no evidence of the percentage of the total number of routes and charters involving such interchange. I further noted the absence of any direct evidence that the temporarily transferred drivers had any work related contacts with Middletown drivers. Because the Employer chose not to reopen the record following the Board's remand and present additional evidence clarifying these facts and concerns, I see no reason to disturb my initial determination that the evidence of temporary interchange between Middletown and other facilities was insufficient to overcome the appropriateness of a single facility unit at Middletown. I note further that the Employer makes no claim, and has proffered no additional evidence, of any significant interchange of drivers between Middletown and other facilities since the close of the hearing in this matter on May 17, 2002. The absence of such additional evidence is noteworthy in light of previous record testimony in *Dattco-Hartford* proffered by the Employer's Vice-President, Donald DeVivo, that the necessity for a particular terminal to send drivers to other terminals or receive drivers from other terminals is not a constant, and instead changes with the passage of time.<sup>2</sup> In this regard, I

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<sup>2</sup> As correctly noted by the Employer in its brief, the hearing officer took administrative notice of the proceedings in the previous cases involving the Employer, including *Dattco-Hartford*.

note that the time period since May 2002 encompasses the beginning of an entirely new school year.

3. Application of *Dattco-Hartford* to the instant case

The Board's rationale in *Dattco-Hartford* supports my previous conclusion that the Employer has failed to rebut the presumptive appropriateness of a unit limited to the Middletown facility. As noted above, the Board's conclusion in that case rested on its finding that the Hartford facility served in the unique capacity of a "labor pool" for other facilities, resulting in about one-third of that unit on a daily basis working in other terminals and supervised by other terminal managers, thereby diminishing the authority of the Hartford terminal manager. In stark contrast to the Hartford facility, the Middletown facility has traditional school bus contracts with local school districts, as in *Dattco-Clinton* and *Dattco-North Branford*, utilizing a steady complement of at least 70 drivers who spend virtually all of their time driving buses out of the Middletown facility. Significantly, they are the only drivers who accumulate Middletown seniority for the purpose of assigning Middletown bus routes. The additional employees from other facilities who have driven out of the Middletown facility have not accumulated Middletown seniority, but such employees have been directly supervised by the Middletown terminal manager and dispatcher, thereby increasing their authority at that facility.

Other duties regularly exercised by the Middletown terminal manager and dispatcher, which the Board specifically noted in *Dattco-Hartford* were not exercised by local management at the Hartford facility, reflect the greater degree of authority and autonomy over day-to-day operations exercised by the Middletown terminal manager and dispatcher. In this regard, as I noted in my previous decision, the Middletown terminal manager interviewed job applicants, established bus routes, and granted and denied employee time off requests. I also noted that the Middletown dispatcher similarly interviewed job applicants and granted or denied time off requests, and also assigned drivers to their routes and oversaw the bidding system for the assignment of all school bus routes prior to the start of the new school year.

Moreover, in my previous decision I noted that although all Middletown drivers are subject to the same rules, regulations, instructions and policies as the drivers at all other facilities, there are certain procedures that applied only to the Middletown facility. In this regard, since at least March 1999, a document entitled “Middletown Terminal Standard Operating Procedures” had been distributed by the former Middletown terminal manager to drivers at the Middletown facility. The August 2000 version of that document included instructions regarding particular school bus routes covered by the Middletown facility, and addressed such items as terminal and dispatch rules, driving regulations, time cards, early dismissals, charters, committees, student conduct, absentee policy, personal appearance, and accidents. Although the Employer’s Vice-President denied any knowledge of the document and claimed that the former terminal manager was not authorized to issue it, the Employer proffered no evidence at the hearing to rebut the document’s maintenance and enforcement at the Middletown facility, and, as noted above, the Employer chose not to reopen the record following the Board’s remand and present additional evidence bearing on this issue. Thus, there is no indication that the Employer ever revoked or rescinded the “Middletown Terminal Standard Operating Procedures”. The existence of such special work procedures applicable only to the Middletown facility further supports the appropriateness of a unit limited to that facility.

4. Conclusion

Based upon the foregoing and the record as a whole, and having considered and applied the Board’s decision in *Dattco-Hartford*, I find that the Employer has not rebutted the single facility presumption and that a unit of drivers limited to the Middletown facility is an appropriate unit.

[Right to Request Review](#)

[Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary,](#)

1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 20, 2002.

Dated at Hartford, Connecticut this 6th day of December, 2002.

/s/ Peter B. Hoffman  
Peter B. Hoffman, Regional Director  
National Labor Relations Board  
Region 34

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